

In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No. 1478 of 1998
Date of decision: 27.8.2009

Sushila Devi

.....Appellant

Versus

Ropar Improvement Trust, Ropar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.L.Sharma, Advocate,
for the appellant.

None for the respondent.

SABINA, J.

Plaintiff Sushila Devi filed a suit for permanent injunction, which was decreed by the Additional Civil Judge (Sr.Divn.) Ropar vide judgment and decree dated 9.4.1996. In appeal, the said judgment and decree were set aside by District Judge, Rupnagar vide judgment and decree dated 11.3.1998 and the suit of the plaintiff was dismissed with costs. Hence, the present appeal by the plaintiff.

Brief facts of the case, as noticed by the lower appellate Court in para Nos. 2 and 3 of its judgment, are as under:-

“2. The brief facts of the case are that Dr.Dharam Pal husband of the plaintiff/respondent No.1 was owner in possession of the house in dispute; that he was also owner of the land adjoining to the same; that Dr.Dharam Pal gifted half portion of the said house and the adjoining land in favour of the plaintiff during his life time. It is also alleged that Dr.Dharam Pal died in March, 1991 and after his death plaintiff inherited his share in the suit land/property being his widow and only legal heir, so she is owner in possession of the suit property. It is further alleged that there is boundary wall on the eastern northern and southern sides upto the height of 4 ½ feet with barbed wire fitted with iron angulars; that eucalyptus and kikar trees were planted more than 21 years ago in the property in suit by Dr.Dharam Pal; that there was an acquisition of award given by the Land Acquisition Collector, Ropar on 1.5.1976 in respect of the land of Dr.Dharam Pal; that no award was given in respect of the structure in the acquired land; that the structure clause in the award at page 14 is as under:-

“There are a number of structures standing in the scheme area. The Improvement Trust,

Ropar has already been asked to get the estimates and plans prepared from some qualified trust engineering staff. The same are not as yet available, accordingly the structures shall be disposed of by a separate award as and when received from the Technical staff of the trust.”

It is also alleged that no award of the structure of the plaintiff has been given; that Dr.Dharam Pal challenged the award dated 1.5.1976 in the Hon'ble High Court through Civil Writ Petition; that the trust had made statement in that court as under:-

“It is stated by Mr.Kuldip Singh learned counsel for the respondents that the plots No.664, 665, 666 shall be allotted to the petitioner at the reserved price which shall be approximately Rs.50 sq. yards. It is further stated that the built up area of the petitioner has been adjusted in the scheme. In view of the aforesaid statements the petitioner does not press the petition. Consequently, it is dismissed with no order as to costs.”

It is further alleged that writ petition No.5933 of 1976 was withdrawn on 12.5.1980; that at that time the Trust told

that plots No.660 to 666 are not falling in the area of house of the plaintiff; that thereafter the Trust started causing threats to demolish the structure of the house of the plaintiff; that a civil suit was filed against defendant No.1 in the court of Senior Sub Judge, Ropar and defendant No.1 Trust made statement in the court that defendant will not take any forcible action against the plaintiff in respect of the suit property and legal action will be taken against the plaintiff, so as the suit was withdrawn on 20.8.1993; that defendant No.1 has violated the undertaking and demolished part of eastern side boundary wall and part of boundary wall of the northern side upto the plinth level on 11.10.1993 illegally and forcibly. It is further alleged that defendant No.1 connived with defendant No.2 who has cut 22 eucalyptus trees by engaging the labour of defendant No.3 with promise to sell the same to defendant No.3 on 5.11.1993; that the plaintiff did not allow to remove those trees from the suit land and the same are lying at the spot; that the defendants have no right to cut and remove the standing trees from the suit property; that the defendants were causing threats to demolish the structure of the house of the plaintiff; that the plaintiff has suffered loss of Rs.10,000/- due to demolition of the boundary wall by defendant No.1; that she has also suffered loss of

Rs.5,000/- due to cutting of 22 trees from the suit property illegally and forcibly and that the defendants were out to dispossess the plaintiff from the suit property illegally and forcibly. It is also alleged that she has not claimed any compensation in respect of land under her house measuring 5 kanals 17 marlas, nor defendant No.1 has assessed any compensation in respect of the suit property, as the same has not been acquired by the Land Acquisition Collector. On the aforesaid allegations, the plaintiff filed suit against the defendants for permanent injunction restraining them from interfering in her ownership with possession by demolishing any part of her house and from removing 22 eucalyptus trees illegally cut by defendant No.2 from the suit property.

3. On notice, defendant No.1/appellant filed written statement by taking preliminary objections that the plaintiff has no locus standi to file the suit; that the suit is not maintainable in the present form and that the plaintiff is estopped from filing the suit by her act and conduct. It is alleged that the land of the plaintiff had been acquired by the defendant Trust for development of the scheme known as Giani Zail Singh Nagar, Ropar; that husband of plaintiff Dr.Dharam Pal had challenged the acquisition proceedings by filing writ petition in the court and has

sought an injunction order for staying operation of the award and not dispossessing her from the land in dispute in the year 1980; that the said writ petition was dismissed on 12.5.1980 by the Hon'ble High Court on the statement of counsel for the defendant Trust that possession of plots No.660, 661, 662 and 663 was to be given to the defendants and plots No.664, 665, 666 had to be allotted to the plaintiff on the reserve price by the defendant Trust and the same would be adjusted in the Scheme. It is further alleged that Dr.Dharam Pal was not in possession of the entire land; that he was in possession of only constructed house, after getting the site plan sanctioned by the Municipal Committee, Ropar; that the remaining portion was already in possession of defendant No.1 in view of acquisition proceedings done by it; that Dr.Dharam Pal had never gifted out any portion of the said house or adjoining land in favour of the plaintiff; that there was no boundary wall on the eastern, northern and southern sides; that in fact defendant Trust is in possession of the land which falls within plots No.666 to 668. It is also alleged that eucalyptus trees have already been cut by the plaintiff without knowledge of the defendant Trust, though the plaintiff had no concern with the same. The defendant admitted that Dr.Dharam Pal

husband of the plaintiff had challenged the acquisition award and counsel for defendant made statement and writ petition of Dr.Dharam Pal was dismissed on 12.5.1980 as withdrawn. Defendant also admitted the filing of civil suit by the plaintiff against defendant No.1 but the defendant never admitted that the plaintiff had withdrawn the suit on 20.8.1993; that defendant No.1 never violated any undertaking given in the court; that plot Nos. 660 to 666 out of which plots No.664 to 666 were to be given to the plaintiff at the reserve price, have already been demarcated but the plaintiff has not deposited the amount of sale price of the plots which were given to her as per undertaking given in the Hon'ble High Court and without depositing the sale price, said plots cannot be transferred or allotted in the name of the plaintiff; that the defendant never caused any threat to the plaintiff nor caused her any loss to her. It is also alleged that defendant No.1 had suffered a loss of more than Rs.15,000/- at the hands of the plaintiff who had cut and removed the eucalyptus trees from the suit land which fell between plot Nos. 660 to 664; that there is no question of dispossession of the plaintiff from the suit land as she is neither the owner nor in possession of any portion of the suit land. Other averments made in the plaint were

denied and prayer was made for dismissal of the suit.

Defendant/respondent No.2 also filed separate written statement by taking preliminary objections which were taken by defendant No.1 she has denied ownership with possession of the plaintiff over the suit property; that there is no boundary wall at the spot and there is no barbed wire; that no eucalyptus or kiker tree is present at the spot; that the spot is simple land comprising of plots situated in Scheme No.1 i.e. Giani Zail Singh Nagar. It was admitted by him that the award was given by the Land Acquisition Collector and that plots No.660 to 666 have been demarcated and plot No.660 has been allotted to him. He also pleaded that this plot has been allotted out of the oustee quota and he has made payment to the Improvement Trust, who has delivered possession of the same to him; that the plaintiff has no right to interfere with peaceful possession of plot No.660 of defendant No.2 that the applications filed by the plaintiff for the appointment of Local Commissioner, were dismissed by the court of Senior Sub Judge, Ropar as the property was already acquired. Other averments made in the plaint were denied and prayer was made for dismissal of the suit.”

On the pleadings of the parties, following issues were

framed by the trial Court:-

- “1. Whether plaintiff is owner in possession of the house in dispute? OPP
2. Whether defendants are illegally and forcibly interfering with possession of the plaintiff over the house in dispute? OPP
3. Whether plaintiff has no locus standi to file the present suit ? OPD
4. Whether the suit is not maintainable in the present form ? OPD
5. Whether plaintiff is estopped from filing the present suit by her act and conduct? OPP
6. Relief.

The substantial question of law that arises in this case is “whether the finding of the learned District Judge is perverse ignoring relevant evidence on record?”

On the last many dates, no one had appeared on behalf of the respondents and hence, the arguments in this case of the learned counsel for the appellant were heard.

The plaintiff had filed a suit for permanent injunction that the defendants be restrained from interfering in her possession by demolishing any part of the house in dispute. Learned counsel for the appellant has argued that the land of the plaintiff was acquired by the Improvement Trust and the constructed area was, however,

exempted from acquisition. The compensation was paid with regard to 38 kanals 14 marlas of land. So far as land in dispute was concerned, the same was exempted from acquisition and no compensation was paid qua the same. The said fact was evident from the testimony of DW-2 Dharampal. Ex.DW-2/C in this regard was the details of payment of compensation amount paid to the land owners. Learned counsel has further submitted that as per the revenue record on the file, the suit property was described as *Gair Mumkin Makan/Bara*.

As per the report of the Local Commissioner when he visited the spot, there was labour of 10-12 persons who were busy in cutting the eucalyptus trees at the spot. They took eucalyptus trees in a tractor in his presence. On disclosing of his identity by the Local Commissioner the said persons left the spot. The labour was also busy in demolishing the boundary wall. In the site plan attached with the report, the place from where the boundary wall had been freshly demolished has been shown. Thus, as per the report of the Local Commissioner, the house of the plaintiff was having a boundary wall.

Learned District Judge has ignored the report of the Local Commissioner as well as the testimony of DW-2 Dharampal and Ex.DW-2/C. From Ex.DW-2/C, it is evident that compensation qua 38 kanals 14 marlas has been paid to Dr.Dharampal, husband of the plaintiff. Even in Annexure R-1 placed on record during the pendency of this appeal, it has been certified by the Executive

Officer, Improvement Trust that Rs.1,90,647.91 paise has been accepted as compensation by Dr.Dharampal. The said certificate, however, incorrectly shows that the said compensation was qua 42 kanals 14 marlas of land, whereas, as per Ex.DW-2/C, the said amount of compensation was paid qua 38 kanals 14 marlas of land. There is nothing on record to suggest that the possession of the land in dispute was ever taken by the Improvement Trust in a suit for permanent injunction. The Court was only required to see whether the plaintiff was in possession of the suit land or not. Since the plaintiff had been successful in proving her possession over the property in dispute, she could not be dis-possessed from the suit property except in due course of law.

Learned District Judge had accepted the appeal and consequently, dismissed the suit of the plaintiff by ignoring relevant evidence on record. In the award (Ex.P-11), it is clearly mentioned that regarding the structure standing in the scheme area, a separate award would be passed as and when the estimate and plans prepared by the technical staff of the trust were received. No such award, having been passed with regard to the suit property, has, however, been placed on record. Hence, the substantial question of law arising in this appeal is answered accordingly.

Consequently, this appeal is allowed. The impugned judgment and decree of the learned District Judge are set aside and the suit of the plaintiff for permanent injunction is decreed. The

defendants are restrained from dis-possessing the plaintiff from the suit land except in due course of law.

No order as to costs.

**(SABINA)
JUDGE**

August 27, 2009
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